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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

QAO

DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JAMES EUSSE, Jr;
CDCR #K-75382,

Plaintiff,

vs.

MARCO VITELA; EVARISTO
DUARTE;
MARTIN CARPIO; ROGER N.
NELSON, Jr.,

Defendants.

Civil No. 13-cv-0916 BEN (NLS)

**ORDER DENYING MOTION TO
PROCEED *IN FORMA PAUPERIS*
AND DISMISSING CASE
WITHOUT PREJUDICE
PURSUANT TO
28 U.S.C. § 1915(a)**

(ECF Doc. No. 2)

Plaintiff, a state inmate currently housed at Centinela State Prison located in Imperial, California, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983.

Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead, he has filed a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a) (ECF Doc. No. 2).

I. MOTION TO PROCEED IFP

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of

1 \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay
 2 only if the party is granted leave to proceed in forma pauperis ("IFP") pursuant to 28
 3 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007);
 4 *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). "Under the PLRA [Prison
 5 Litigation Reform Act], all prisoners who file IFP civil actions must pay the full amount
 6 of the filing fee," regardless of whether the action is ultimately dismissed for any reason.
 7 *See Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002) (citing 28 U.S.C.
 8 § 1915(b)(1) & (2)).

9 In order to comply with the PLRA, prisoners seeking leave to proceed IFP must
 10 also submit a "certified copy of the trust fund account statement (or institutional
 11 equivalent) for the prisoner for the 6-month period immediately preceding the filing of
 12 the complaint. . . ." 28 U.S.C. § 1915(a)(2). From the certified trust account statement,
 13 the Court assesses an initial payment of 20% of (a) the average monthly deposits in the
 14 account for the past six months, or (b) the average monthly balance in the account for the
 15 past six months, whichever is greater, unless the prisoner has no assets. *See* 28 U.S.C.
 16 § 1915(b)(1), (4); *see Taylor*, 281 F.3d at 850. Thereafter, the institution having custody
 17 of the prisoner must collect subsequent payments, assessed at 20% of the preceding
 18 month's income, in any month in which the prisoner's account exceeds \$10, and forward
 19 those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C.
 20 § 1915(b)(2).

21 While Plaintiff has filed a Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a),
 22 he has not attached a certified copy of his prison trust account statement for the 6-month
 23 period immediately preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2);
 24 S.D. CAL. CIVLR 3.2. Section 1915(a)(2) clearly mandates that prisoners "seeking to
 25 bring a civil action . . . without prepayment of fees . . . *shall* submit a certified copy of
 26 the trust fund account statement (or institutional equivalent) . . . for the 6-month period
 27 immediately preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2) (emphasis
 28 added).

1 Without Plaintiff's trust account statement, the Court is simply unable to assess
2 the appropriate amount of the filing fee which is statutorily required to initiate the
3 prosecution of this action. *See* 28 U.S.C. § 1915(b)(1).

4 **II. CONCLUSION AND ORDER**

5 For the reasons set forth above, **IT IS ORDERED** that:

6 (1) Plaintiff's Motion to Proceed IFP (ECF Doc. No. 2) is DENIED and the
7 action is DISMISSED without prejudice for failure to prepay the \$350 filing fee
8 mandated by 28 U.S.C. § 1914(a).

9 (2) Plaintiff is GRANTED an additional forty-five (45) days from the date of
10 this Order to either: (1) pay the entire \$350 filing fee, **or** (2) file a new Motion to
11 Proceed IFP, *which includes a certified copy of his trust account statement for the 6-*
12 *month period preceding the filing of his Complaint* pursuant to 28 U.S.C. § 1915(a)(2)
13 and S.D. CAL. CIVLR 3.2(b).

14 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff
15 with a Court-approved form "Motion and Declaration in Support of Motion to Proceed
16 IFP" in this matter. If Plaintiff neither pays the \$350 filing fee in full nor sufficiently
17 completes and files the attached Motion to Proceed IFP, *together with a certified copy*
18 *of his trust account statement within 45 days*, this action shall remain closed without
19 further Order of the Court.

20
21
22 DATED: 4/23/13


HON. ROGER T. BENITEZ
United States District Judge